

Prepared testimony of

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*Gene Wars:  
Military Control over the New Genetic Technologies*

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## Testimony of Charles Piller

Senator Leahy and subcommittee members: My name is Charles Piller, and I am an investigative journalist specializing in biological and chemical arms control. (A brief biographical statement follows this testimony.) I greatly appreciate this opportunity to describe my experiences in seeking information under the Freedom of Information Act (FOIA).

I have used the FOIA to obtain information about what are highly secretive government programs pertaining to biological and chemical weapons research. The policies and tests I have sought information on entail profoundly important national security, arms control and public health implications. My purpose in seeking these documents has been to expand informed public debate about the nature and wisdom of the Defense Department's ongoing efforts in biological and chemical warfare (CBW). My work has taken the form of numerous newspaper and magazine articles, as well as a book, *Gene Wars: Military Control Over the New Genetic Technologies*, published early this year by William Morrow and Company. While I have found the FOIA invaluable in my work, extreme difficulties with agency noncompliance have, at times, made my work impossible.

I will be focusing my comments primarily on an FOIA request to the Department of the Army, which I filed in January 1985. The request is for

documents associated with field testing of pathogenic biological organisms during the 1950s and 1960s at Dugway Proving Ground (a test site in Utah). The purpose of the request is to determine the range and extent of such testing and to appraise the safety practices used during those tests.

My interest is not just for the sake of the historical record. The current Army biological weapons (BW) research program, which by conservative estimates runs nearly \$100 million per year, is portrayed by the Army as safely conducted, well administered, and properly defensive in character. Indeed, the United States is a signatory to the 1972 BW and Toxin Weapons Convention, which prohibits the use and possession of such weapons. Even the military acknowledges, however, that in BW research the difference between offense and defense is a matter of application and intent. Many leading scientists (and recently, Senate investigators) who have evaluated Army descriptions of its work are concerned that the program generates grave public health hazards. Others suggest that the research is highly destabilizing to the biological arms control process. Yet, because of the Army's extensive secrecy about this work, the public must rely on the Army's reassurances that its program, as constituted, is in the national interest. We are asked to accept the Army's "trust us" position, with no oversight of the program's goals and methods.

A prime factor in determining the Army's trustworthiness on BW matters, of course, is whether that agency has conducted its biological research safely in the past, and whether its public statements have accurately portrayed its past

research program--hence the request. I was stimulated to pursue this issue, in part, by the experience of previous requesters using the FOIA. In the 1970s, they uncovered numerous revelations of CBW testing by the Army and the CIA that was of dubious merit and was conducted with callous disregard for public health; indeed, using unwitting human guinea pigs.

(By the same token, I also used the FOIA to obtain data on the Army's current BW research, to determine if those studies are consistent with the program's stated goals and characteristics. My experiences in this regard are presented below.)

I have filed about two dozen FOIA requests to several federal agencies, including the DOD, CIA, Department of Health and Human Services and Department of Education, over the past few years. The Dugway Proving Ground request, by a wide margin, has proved the most problematic. Three and one-half years after the request was filed, it is still far from resolved. Federal agencies rarely comply with the letter of the FOIA rules on deadlines. To be sure, moderate delays for complex or lengthy requests are understandable. But it strains credulity that any request would require routine delays of several months at each step of the process. The voluminous correspondence and legal preparations have consumed hundreds of hours of work on the part of my attorneys and myself. I would not have been able to continue without attorneys who work for a nominal fee because they believe in the importance of this work. Many journalists who do not have such legal help

must abort legitimate inquiries in the face of resistance by the government. Following are the basic issues and frustrations I have encountered:

### **Wildly Conflicting Estimates of Fees**

Dugway authorities initially estimated that the cost for search and reproduction of documents pertaining to my request would be approximately \$2,500. This sum was well beyond my ability to pay. The Army denied my request for a fee waiver on the grounds that the historical information I was seeking would not contribute meaningfully to public understanding of this issue, nor is it relevant to the current BW research program. The Army claimed that all pertinent information had previously been published in a report to a Senate subcommittee in 1977.

Shortly after receiving this response, I was joined on the request by the CBS News program, 60 Minutes. We agreed to pay the \$2,500 and asked Dugway to expedite the request. Three weeks later we received a response from the headquarters of the Army Test and Evaluation Command (TECOM--the Army agency above Dugway) indicating that the initial estimate was a miscalculation--by a factor of 100 or more. We were informed that the request would now cost a minimum of \$206,297, and could run as high as \$500,000. Instead of the relatively small number of documents we expected after the original estimate, we were told that more than 10,000 relevant documents containing approximately 1.5 million pages had been identified.

### **Apparently Deliberate Efforts to Obfuscate the Process**

This staggering load of information would have been well beyond our ability to evaluate, and obviously was financially prohibitive and unduly burdensome on the government. To say the least, it seemed highly suspicious that as soon as CBS joined the request and we agreed to pay the fees, the fee and document estimates were revised upward astronomically. Nevertheless, we made a good-faith effort, directly following Army suggestions, to narrow the scope of the request to make it more specific and manageable. TECOM officials suggested that we seek indexes of the reports in question. We could use the indexes to request specific reports that pertain most directly to the request. TECOM referred us to two governmental data banks--the National Technical Information Service (NTIS) and the Defense Technical Information Center (DTIC), which were described as repositories for the information. After two months of conversations with these agencies, I discovered that contrary to TECOM suggestions, NTIS does not hold the information in question. DTIC maintains some of the information, but denies access to private citizens.

TECOM then consented to review the DTIC index, as well as a *32-volume* Dugway index. I was told that these indexes, although containing unclassified studies, were themselves classified due to the "mosaic" concept. This highly controversial idea holds that a broad range of unclassified materials could together be used to create a classified overview of a given subject. It has increasingly been used to deny the release of unclassified documents under the

FOIA. I found it outrageous, however, that this mosaic concept had been taken a step further--to withhold merely an index of the documents.

Ten months later I was presented with an 18-*item* "index"-- representing a ludicrously small percentage of the total holdings. This was represented as a complete list of studies relevant to my request. It is particularly ironic that the Army would make such a claim given the fact that TECOM itself alerted me to a list, supplied to the Senate in 1977, which notes many more than 18 tests.

At this point we began to question the Army's seriousness in complying with the FOIA. These time-consuming reviews, followed by inconsistent, obviously inadequate and perhaps disingenuous responses, appeared to be a deliberate effort to wear us down and cause us to abandon the request in frustration.

Several months later, in response to a letter from my attorney, a Dugway official disavowed the TECOM fee estimates and actions, and reverted to the original estimate of \$2,500. The discrepancy between the estimates for fees and numbers of documents has never been adequately explained. The Dugway official indicated that he would begin a new search for relevant documents, and begin to release the unclassified holdings. Six weeks later Dugway released 31 documents, along with a bill for \$8,600. This action was contrary to our specific instructions that we be notified of high fees in advance. We then re-filed a fee-waiver request, using arguments that were largely the same as the original fee-waiver request two years earlier. We expected a perfunctory denial, which would have forced us to drop the request or move to litigation. This time, much

to our surprise, but in keeping with the Army's unpredictable approach, the request was approved.

Since that time documents have slowly trickled forth; to date 63 have been released. On several occasions during this period, the Army claimed to have released all the relevant documents. But each time, my attorneys responded that information already in the public record--indeed, information the Army itself provided--proved that their releases were merely the tip of the iceberg. Then, in each case, Army officials somehow managed to find new documents to release. We are currently waiting for our most recent appeal to be processed.

### **Other Roadblocks Used by the Army**

Two other aspects of the Army's actions led us to suspect a deliberate effort to deter our investigation. The first involves the relevance of documents released so far. More than a dozen documents, involving a total of several thousand pages, contain no references whatever to the subject of the request, field testing of biological agents. These were, however, time consuming to examine, and certainly served the purpose of slowing me down by burying me in irrelevant materials.

I have also been troubled by the manner in which portions of classified documents were censored. Deletions of up to 100 pages were made in many documents, with no ostensible effort to excise only properly classified portions and leave releasable portions intact, as the FOIA requires. These deletions seem particularly arbitrary in light of other documents we have received. For



example, in several instances, sections pertaining to safety precautions and test results have been withheld in full or in part. Yet, similar information in other documents with respect to other tests, many of which involved the very same biological agents, were released in their entirety. The Army also ignored the FOIA requirement that it cite specific sections of the Act permitting the deletions. This made it difficult to establish credible justification for our appeal. Furthermore, the deletions themselves were cut out, rather than blacked-out, turning many of the documents to virtual confetti.

### **Results of These Efforts**

Despite this strange and exasperating experience, through dogged determination we have pieced together many important pieces of the BW puzzle. Indeed, the major concerns that were the basis of this request--pertaining to the Army's openness about its safety record and about the extent of its field testing with dangerous biological agents--proved to be well founded. Contrary to claims made by the Army to the Senate in 1977 and repeatedly since then, documents we have obtained show cavalier, appallingly poor safety practices. In addition, despite repeated requests, we have never received any documents pertaining to the blue-ribbon safety committees set up to oversee the testing program. Furthermore, scores of tests that were never before revealed are indicated in the documents released to us, proving that the 1977 Army report was grossly incomplete. At best, this was incompetence in record keeping--at worst deliberate subterfuge. This, of course, leads us back to the larger purpose

of the request--to appraise Army credibility based on its track record. The results of my research are hardly reassuring in this regard. I continue to seek the other documents relevant to this request in order to explore that question more completely.

### **A Common Experience**

Although this episode was particularly bizarre, it is by no means unique. I'm sure you're aware that the Army and other government agencies have used their control over the bureaucratic process to prevent journalists from using the FOIA as it was intended by Congress.

In my own experience, I have encountered these tactics repeatedly. For example, in another line of research for my book I sought the unclassified summaries that the DOD prepares for each of its biotechnology research studies. The object was, again, to evaluate the military's claims that its work was safely conducted and properly defensive in nature. The response I received was disconcertingly similar to my experience in the Dugway example.

After many months of unexplained delays, I received a number of records that were described by the DOD as the complete inventory of studies. I then reviewed other open, publicly available sources, including a wide range of DOD documents, scientific journal articles and press reports. I also filed new FOIA requests to other branches of the military bureaucracy to cross-check the original request. I discovered that the documents released constituted only a fraction of the relevant, unclassified documents. Moreover, I was able to

determine that the materials released to me did not even represent a good cross-section of the program. Again, one of two explanations is inescapable; either the DOD has lost administrative control over its biological weapons research, or it is deliberately obscuring the range or extent of the research program. Neither prospect is particularly reassuring.

I urge you to press legislation to strengthen the FOIA. At present, there are no effective disincentives to agency foot dragging, no meaningful penalties for outright noncompliance. Moreover, exemption categories allowed by the Act are so general as to encourage wholesale, self-serving or arbitrary censorship on the pretext of protecting "national security."

In sum, despite the many difficulties associated with this process, I have found the FOIA essential in unearthing unclassified information with significant implications for military policy. I must conclude, however, that the Army's actions were illegal, and calculated to withhold information key to public policy debates. If the American people are to participate intelligently in setting military goals in our democratic society, such information must be made more readily available. Agency noncompliance with the FOIA is the true threat to national security.

## **Biographical information on Charles Piller**

Charles Piller is an investigative journalist specializing in science and technology issues, and is one of the nation's leading reporters on biological and chemical weapons. Piller is co-author of *Gene Wars: Military Control Over the New Genetic Technologies* (published by William Morrow and Company, 1988), an exposition of the history of biochemical warfare and an analysis of current U.S. Department of Defense research into biological weaponry using the tools of genetic engineering. His articles on this subject have appeared in *The Philadelphia Inquirer*, *The Nation*, *The Oakland Tribune* and many other publications. His work has become of the basis for articles by journalists and academicians around the country. Piller has assisted the Senate Subcommittee on Oversight of Government Management in its recent investigation of the DOD's biological weapons research. He has served as a consultant on biological and chemical warfare issues to CBS News and several local television stations, and has been interviewed about this subject by dozens of local and national publications and broadcast media.

More generally, Piller's writings on health, government regulation and international affairs have appeared in *The Los Angeles Times*, *Baltimore Sun*, *Toronto Globe and Mail*, *San Francisco Chronicle*, *San Jose Mercury News* and many other publications. Piller is employed as a writer by the University of California and lives in Oakland, California.